

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 583

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Ray Begaye

AN ACT

RELATING TO CORRECTIONS; REINFORCING THE RIGHTS OF NATIVE  
AMERICAN RESIDENTS AND INMATES TO TRADITIONAL RELIGIOUS  
PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-2-12 NMSA 1978 (being Laws 1993,  
Chapter 77, Section 41, as amended) is amended to read:

"32A-2-12. PLACEMENT OR DETENTION.--

A. A child alleged to be a delinquent child may be  
placed or detained, pending a court hearing, in any of the  
following places, as long as the contract for the placement or  
detention includes a clause protecting and respecting an Indian  
child's religious beliefs:

(1) a licensed foster home or a home otherwise  
authorized under the law to provide foster or group care;

.153451.1

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 (2) a facility operated by a licensed child  
2 welfare services agency;

3 (3) a shelter-care facility provided for in  
4 the Children's Shelter Care Act or a detention facility  
5 certified by the department for children alleged to be  
6 delinquent children;

7 (4) any other suitable place, other than a  
8 facility for the long-term care and rehabilitation of  
9 delinquent children to which children adjudicated as delinquent  
10 may be confined pursuant to Section 32A-2-19 NMSA 1978,  
11 designated by the court and ~~which~~ that meets the standards  
12 for detention facilities pursuant to the Children's Code and  
13 federal law; or

14 (5) the child's home or place of residence,  
15 under conditions and restrictions approved by the court.

16 B. A child alleged to be a youthful offender may be  
17 detained, pending a court hearing, in any of the following  
18 places:

19 (1) a detention facility, licensed by the  
20 department, for children alleged to be delinquent children; or

21 (2) any other suitable place, other than a  
22 facility for the long-term care and rehabilitation of  
23 delinquent children to which children adjudicated as delinquent  
24 children may be confined pursuant to Section 32A-2-19 NMSA  
25 1978, designated by the court and that meets the standards for

.153451.1

underscoring material = new  
[bracketed material] = delete

1 detention facilities pursuant to the Children's Code and  
2 federal law.

3 C. A child adjudicated as a youthful offender who  
4 is violent toward staff or other residents in a detention  
5 facility may be transferred and detained, pending a court  
6 hearing, in a county jail. In the event that a child is  
7 detained in a jail, the director of the jail shall presume that  
8 the child is vulnerable to victimization by inmates within the  
9 adult population because of [~~his~~] the child's age, and shall  
10 take measures to provide protection to the child. However,  
11 provision of protective measures shall not result in  
12 diminishing a child's civil rights to less than those existing  
13 for an incarcerated adult.

14 D. A child who has previously been incarcerated as  
15 an adult or a person older than eighteen years of age shall not  
16 be detained in a juvenile detention facility or a facility for  
17 the long-term care and rehabilitation of delinquent children,  
18 but may be detained in a county jail. In the event that a  
19 child is detained in a jail, the director of the jail shall  
20 presume that the child is vulnerable to victimization by  
21 inmates within the adult population because of [~~his~~] the  
22 child's age, and shall take measures to provide protection to  
23 the child. However, provision of protective measures shall not  
24 result in diminishing a child's civil rights to less than those  
25 existing for an incarcerated adult.

.153451.1

underscored material = new  
[bracketed material] = delete

1           E. A child alleged to be a serious youthful  
2 offender may be detained pending a court hearing in any of the  
3 following places, prior to arraignment in metropolitan,  
4 magistrate or district court:

5                   (1) a detention facility, licensed by the  
6 department, for children alleged to be delinquent children;

7                   (2) any other suitable place, other than a  
8 facility for the long-term care and rehabilitation of  
9 delinquent children to which children adjudicated as delinquent  
10 children may be confined pursuant to Section 32A-2-19 NMSA  
11 1978, designated by the court [~~which~~] and that meets the  
12 standards for detention facilities pursuant to the Children's  
13 Code and federal law; or

14                   (3) a county jail, if a facility in Paragraph  
15 (1) or (2) of this subsection is not appropriate. In the event  
16 that a child is detained in a jail, the director of the jail  
17 shall presume that the child is vulnerable to victimization by  
18 inmates within the adult population because of [~~his~~] the  
19 child's age and shall take measures to provide protection to  
20 the child. However, provision of protective measures shall not  
21 result in diminishing a child's civil rights to less than those  
22 existing for an incarcerated adult."

23           Section 2. Section 32A-18-4 NMSA 1978 (being Laws 1993,  
24 Chapter 77, Section 227) is amended to read:

25           "32A-18-4. CULTURAL AWARENESS.--

.153451.1

underscored material = new  
[bracketed material] = delete

1           A. An Indian child placed in foster care,  
2 pre-adoptive placement, adoptive placement or a secure facility  
3 shall be allowed to maintain [~~his~~] the child's cultural ties  
4 and religious practices and shall be permitted to participate  
5 in activities that strengthen cultural awareness.

6           B. An Indian child placed in a secure facility  
7 shall be permitted to participate in activities that strengthen  
8 cultural awareness and that protect and respect the child's  
9 religious beliefs. A representative of the child's culture  
10 shall be allowed access to the secure facility to provide  
11 activities that strengthen cultural awareness; provided that  
12 the activities are restricted to the premises of the secure  
13 facility."

14           Section 3. Section 33-10-3 NMSA 1978 (being Laws 1993,  
15 Chapter 108, Section 1) is amended to read:

16           "33-10-3. DEFINITIONS.--As used in the Native American  
17 Counseling Act:

18           A. "department" means the corrections department or  
19 the secretary of corrections;

20           B. "children, youth and families department"  
21 includes the secretary of children, youth and families;

22           ~~[A.]~~ C. "Native American" means any person who is  
23 descended from or is a member of an American Indian tribe,  
24 pueblo or band or is a native Hawaiian or Alaskan native; ~~[and]~~

25           ~~[B.]~~ D. "Native American religion" means any

.153451.1

underscoring material = new  
[bracketed material] = delete

1 religion or religious belief that is practiced by a Native  
2 American, the origin and interpretation of which is from a  
3 traditional Native American culture or community, and includes  
4 the Native American church; and

5 E. "state corrections facility" includes a  
6 privately operated corrections facility under contract with the  
7 department."

8 Section 4. Section 33-10-4 NMSA 1978 (being Laws 1993,  
9 Chapter 108, Section 2) is amended to read:

10 "33-10-4. FREEDOM OF WORSHIP.--

11 A. Native American religions shall be afforded by  
12 the corrections department the same standing and respect as  
13 Judeo-Christian religions. A valid contract with the  
14 department or the children, youth and families department for  
15 care, treatment and housing of Native American inmates or  
16 residents shall contain a clause protecting and respecting  
17 Native American religions and religious practices. The  
18 practice of Native American religion shall be permitted at each  
19 state corrections facility, including women's and juvenile  
20 corrections facilities, to the extent that it does not threaten  
21 the reasonable security of the corrections facility.

22 B. Upon the request of any Native American inmate  
23 or group of Native American inmates, a state corrections  
24 facility shall permit access on a regular basis, for at least  
25 six consecutive hours per week, to:

.153451.1

underscored material = new  
[bracketed material] = delete

1 (1) Native American spiritual advisers;  
2 (2) items and materials used in religious  
3 ceremonies and provided by the inmate or a spiritual ~~[adviser]~~  
4 adviser, including cedar, corn husks, corn pollen, eagle and  
5 other feathers, sage, sweet grass, tobacco, willow, drums,  
6 gourds, lava rock, medicine bundles, bags or pouches, pipes,  
7 staffs and other traditional items and materials, except that  
8 the sacramental use of peyote by an inmate while incarcerated  
9 is prohibited even though such use is in conformance with the  
10 religious and spiritual beliefs and policies of the Native  
11 American church; and

12 (3) a sweat lodge on the grounds of the  
13 corrections facility.

14 C. A secure place at the site of worship in which  
15 to store the items and materials used to conduct the religious  
16 ceremonies shall be provided. Any Native American inmate or  
17 resident may possess items and materials listed in Paragraph  
18 (2) of Subsection B of this section and used in religious  
19 ceremonies, ~~[as defined in Section 2 Subsection B of this Act]~~  
20 as long as this possession does not threaten the reasonable  
21 security of the corrections facility.

22 D. Native American spiritual advisers shall be  
23 afforded by the administration of a state corrections facility  
24 the same stature, respect and inmate contact as is afforded the  
25 clergy of any Judeo-Christian religion.

.153451.1

underscored material = new  
[bracketed material] = delete

1           E. No Native American inmate shall be required to  
2 cut his hair if it conflicts with his traditional Native  
3 American religious beliefs."

4           Section 5. Section 33-15-3 NMSA 1978 (being Laws 2001,  
5 Chapter 169, Section 3) is amended to read:

6           "33-15-3. INCARCERATION OF OUT-OF-STATE INMATES IN  
7 PRIVATELY OPERATED CORRECTIONAL FACILITIES--MINIMUM  
8 STANDARDS--SECRETARY'S AUTHORITY TO ADOPT RULES.--

9           A. A privately operated correctional facility shall  
10 have statutory authority, other than this section, in order to  
11 operate or house inmates. In addition to satisfying  
12 requirements set forth in a statute other than this section, a  
13 privately operated correctional facility shall meet the  
14 following minimum standards before housing ten or more  
15 out-of-state inmates:

16                   (1) all correctional officers and other  
17 persons, employed or engaged by a privately operated  
18 correctional facility, whose primary function is to provide  
19 security shall, before being assigned to provide the security  
20 functions, successfully complete a screening, background check  
21 and training course approved by the secretary. The secretary  
22 may offer to provide services to the privately operated  
23 correctional facility, including qualifying screening,  
24 background checks and a training program at the corrections  
25 academy at a reasonable cost;

.153451.1

underscoring material = new  
[bracketed material] = delete

1                   (2) a privately operated correctional facility  
2 shall provide immediate oral notice, followed by a written  
3 report, to the secretaries of public safety and corrections,  
4 the local county sheriff and the chief of police of the  
5 municipality in which the facility is located, or the chief of  
6 police of the nearest municipality, or their designees,  
7 whenever any of the following events occur at the privately  
8 operated correctional facility:

9                   (a) discharge of a firearm other than  
10 for training purposes;

11                   (b) discharge of a chemical agent, gas  
12 or munitions to control the behavior of two or more inmates;

13                   (c) a hostage situation;

14                   (d) the death of an inmate, staff  
15 member, visitor or other person;

16                   (e) a disturbance involving five or more  
17 inmates;

18                   (f) an escape or attempted escape; or

19                   (g) the commission of a felony offense;

20                   (3) a privately operated correctional facility  
21 shall obtain and maintain current accreditation by the American  
22 correctional association regarding standards for prisons or  
23 standards for jails. As to any new privately operated  
24 correctional facility, the secretary may allow the facility a  
25 period of two years from the date the facility becomes

.153451.1

underscoring material = new  
[bracketed material] = delete

1 operational to obtain accreditation or may require the facility  
2 to apply for and receive provisional accreditation;

3 (4) a privately operated correctional facility  
4 shall prepare an emergency response plan deemed satisfactory by  
5 the secretary. A copy of the emergency response plan shall be  
6 provided to the secretaries of public safety and corrections,  
7 the local county sheriff and the chief of police of the  
8 municipality in which the facility is located, or the chief of  
9 police of the nearest municipality, or their designees;

10 (5) a privately operated correctional facility  
11 shall ensure that an out-of-state inmate released from the  
12 privately operated correctional facility is released to his  
13 state of origin; ~~and~~

14 (6) a privately operated correctional facility  
15 shall include a clause expressly protecting and respecting the  
16 Native American religion and religious practices of Native  
17 American inmates as required by the Native American Counseling  
18 Act; and

19 ~~(6)~~ (7) the owner or operator of a privately  
20 operated correctional facility shall enter into a written  
21 contract with the entity that proposes to house ten or more  
22 out-of-state inmates in the facility, and the contract shall  
23 contain provisions that require compliance with the minimum  
24 standards set forth in this subsection.

25 B. The secretary shall review all contracts and

.153451.1

underscoring material = new  
[bracketed material] = delete

1 proposed contracts between the owner or operator of a privately  
2 operated correctional facility and the entity that proposes to  
3 house ten or more out-of-state inmates in the facility. The  
4 secretary shall prepare and submit to the county a written  
5 report summarizing ~~[his]~~ the secretary's review of each  
6 contract.

7 C. The secretary shall inspect and monitor a  
8 privately operated correctional facility that houses or  
9 proposes to house ten or more out-of-state inmates to ensure  
10 compliance with the minimum standards set forth in this section  
11 and to ensure compliance with standards and rules adopted by  
12 the secretary pursuant to this section. The secretary shall be  
13 provided with the classification records and other relevant  
14 records pertaining to the out-of-state inmates who are proposed  
15 to be incarcerated at the privately operated correctional  
16 facility. The secretary shall have subpoena authority as to  
17 all present and former employees and other personnel of the  
18 privately operated correctional facility, as well as to all  
19 records pertaining to the facility, for the purposes of  
20 inspecting and monitoring the facility. Upon completion of an  
21 inspection, the secretary shall submit a report with findings  
22 and recommendations to the privately operated correctional  
23 facility, the board of county commissioners for the county  
24 where the facility is located, the county sheriff of the county  
25 where the facility is located and the appropriate legislative

.153451.1

1 [corrections oversight] committee. The secretary shall allow  
2 the facility a reasonable period of time to address any  
3 deficiencies and recommendations set forth in the report. The  
4 secretary may conduct additional inspections to determine  
5 compliance with minimum standards, rules and any  
6 recommendations. If a privately operated correctional facility  
7 that houses or proposes to house out-of-state inmates fails to  
8 comply with the standards and rules authorized pursuant to this  
9 section, the secretary shall notify the county of the  
10 deficiencies and recommend corrective action."

11 - 12 -  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25